
From: Minsky Joanne B
Sent: Tuesday, August 14, 2007 5:23 PM
To: Lafosse Dorothy R
Cc: Minsky Joanne B
Subject: RE: Dec'd Returns

Tracking: Recipient Read
Lafosse Dorothy R Read: 8/20/2007 8:41 AM
Minsky Joanne B Read: 8/14/2007 5:23 PM

Dorothy,

I heard back for the counsel expert on EITC. My recollection of the EIC eligibility rules was correct. The fact that the taxpayer dies during the year, or that the dependent dies during the year will not necessarily preclude the tp from claiming the EITC.

As for the death of the child during the taxable year, the Service position has long been that, if the child fails the more than half the year rule because the child died or was born during the year, the child will meet that rule if the child lived with the taxpayer for the entire time the child was alive for the year, including temporary absences. This is included in Pub 596 under the residency test. It's also in the 1040 instructions.

As for the death of the taxpayer, Section 32(e) provides as follows:

(e) Taxable year must be full taxable year - Except in the case of a taxable year closed by the reason of the death of the taxpayer, no credit shall be allowable under this section in the case of a taxable year covering a period less than 12 months.

Thus, if the taxpayer or the dependant die during the year for which the EITC is claimed, you would be required to have exam consider the case to determine whether the tp was entitled to the EITC. That is, the fact that either the tp or the dependant are deceased would not change the pre-refund processing of the case where EITC is involved.

PMTA: 01190